UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/SR.3
9 August 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 1991, at 10 a.m.

Chairman: Mr. JOINET

CONTENTS

Organization of work (continued)

Review of the work of the Sub-Commission

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.10 a.m.

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN drew attention to a number of decisions which the Sub-Commission had adopted at its private meeting on the previous day. It had decided to establish three in-session working groups in accordance with Sub-Commission decisions 1989/104, 1990/101 and 1990/125 and with Commission on Human Rights resolution 1990/64. They were the working group on detention, the working group on methods of work under items 3 and 6, and the working group on the right to leave and to return. Regional groups were requested to indicate the names of the members they proposed to serve on the three working groups.

2. Meetings would begin at the scheduled time, and another officer of the Sub-Commission would open a meeting if he himself was unable to do so. The order of speakers would be: first, members of the Sub-Commission, who could speak at any time; second, observers from intergovernmental and non-governmental organizations; and third, observers from member States replying to allegations made against their Governments. Members of the Sub-Commission were recommended to limit their statements to 10 to 15 minutes. Observers could speak for 10 minutes, and for 10 and 6 minutes on composite agenda items 5, 6 and 10. Observers from member States, making a statement equivalent to the exercise of the right of reply, would be allowed five minutes the first time and three minutes the second time. They were requested not to make accusations against another member State. Special rapporteurs would be granted a total of 35 minutes, which they could distribute as they saw fit between the introduction of their reports and their concluding remarks. When a State was directly referred to in a draft resolution, its representative would be entitled to speak for two minutes immediately before the vote. The list of speakers was open from the beginning of the session for all agenda items concurrently. Closure of the list of speakers would be announced as work proceeded. Special attention should be paid to that point, since at its previous session the Sub-Commission had had to postpone its consideration of some items owing to a lack of speakers. At the current session, if the Chairman had no speaker on his list, the debate on the item concerned would be closed and the Sub-Commission would pass on to the next item. Prospective speakers were therefore urged to put their names down in good time.

3. The time-limit for the submission of draft resolutions without financial implications would be four working days before the date scheduled for the vote. The time-limit for the submission of draft resolutions having financial implications would be six working days before the date scheduled for the vote, to enable the Secretariat to determine the cost of implementating them.

4. As Special Rapporteurs, the Sub-Commission had decided to invite Mr. Varela Quirós to speak on item 4, Mr. Mazilu on item 17 (a), Mr. Bhandare on item 14, and Mr. Suescún Monroy on item 8. Since there was no budgetary provision for the latter two Special Rapporteurs, the Secretariat would be asked to confirm the feasibility of inviting them.

5. The Sub-Commission's joint meeting with the Committee on the Elimination of Racial Discrimination (CERD) was scheduled for 19 August 1991. He, as Chairman of the Sub-Commission, would shortly be meeting the Chairman of CERD for a preliminary exchange of views on the arrangements for the meeting. There would probably not be enough time to devote one whole day to the joint meeting, which might have to be limited to half a day.

6. Members of the Sub-Commission now had before them a draft calendar for the session, on which they were invited to express their views.

7. Mrs. KSENTINI observed that the Sub-Commission could hardly close its debate on an agenda item if the relevant documentation was not yet available.

8. Mrs. DAES said that more time was needed for item 18. The protection of minorities was one of the most complex issues in the contemporary world. The Sub-Commission would have to consider Mr. Eide's report (E/CN.4/Sub.2/1991/43) and to plan strategies. Moreover, every year the item on the protection of minorities was among the last to be discussed, leaving the Sub-Commission with little time in which to consider the Working Group's report and draft resolutions.

9. In addition, consideration of item 15 should be brought forward from 28 August so that the report of the Working Group on Indigenous Populations on its ninth session (E/CN.4/Sub.2/1991/40) could receive proper attention.

10. Mr. ALFONSO MARTÍNEZ suggested that the time allowed for the representatives of member States to speak on resolutions concerning their Governments be increased to five minutes, since it was very difficult for them to make an adequate statement in only two minutes. Also, the arrangement whereby the Sub-Commission would automatically close its debate on an item if the Chairman had no names on his list of speakers was too rigid. Not all the necessary documentation might be available, and some prospective speakers might be unable to take the floor at the time concerned.

11. Mr. EIDE suggested that the meeting of the working group on the right to leave and to return be postponed for at least one week. So far only slow progress had been made. Mr. Sadi had not been able to prepare the revised version of the draft declaration, and more time was needed for informal consultations prior to the meeting.

12. He supported Mrs. Daes regarding item 18. It was very important to him, as Special Rapporteur, that there should be a full discussion of the principles to be applied. More time was therefore needed.

13. It was also important to establish an institutional link with CERD. A joint meeting lasting only half a day would be rather meaningless. In order to allow time for a full day's meeting, he suggested that the time to be devoted to the consideration of item 5 (a) be reduced.

14. Mr. DIACONU agreed with Mrs. Daes and Mr. Eide that more time was needed for item 18. Too much time was allotted to items 10 and 11. More time was also needed for item 16, the consideration of which should be brought forward

from the fourth to the third week of the session. Non-governmental organizations had many serious comments to make on the subject of contemporary forms of slavery, and they ought to be provided with an opportunity to make them to the full membership of the Sub-Commission and not just to the members of the Working Group on Contemporary Forms of Slavery.

15. Mrs. KSENTINI said that, as Chairman of the Working Group on Contemporary Forms of Slavery, she, too, would like more time for the consideration of item 16, the multiple aspects of which needed to be thoroughly studied by the Sub-Commission. In particular, the programmes of action prepared by the Working Group required serious attention. Also, the item should be brought forward in the calendar.

16. Mrs. ATTAH endorsed Mrs. Daes's comments regarding item 15 on discrimination against indigenous peoples, which should be taken up earlier in the session for the benefit of observers for non-governmental organizations. Item 18 on the protection of minorities was also very important.

17. She supported Mr. Alfonso Martínez's suggestion that observers for member States should be allowed five minutes instead of two in which to speak on draft resolutions concerning their Governments.

18. Items 10 and 11 had been given undue prominence. and a reduction of half a day for their consideration would be appropriate. Only one and a half days, however, had been allotted for the consideration of items 5 (a) and 5 (b). That time should not be reduced further, since apartheid was still a major problem.

19. Mrs. WARZAZI endorsed the remarks make by Mrs. Daes and Mr. Eide regarding the protection of minorities. The situation was particularly disturbing in the case of migrant workers, millions of whom were being exposed to a wave of racism and xenophobia. More time should therefore be devoted to item 18, perhaps by reducing the time allotted to item 6.

20. She also supported Mr. Eide's suggestion regarding the meeting of the working group on the right to leave one's country, but for a different reason - namely, that the issue was no longer as important as it had been a few years previously, when "socialist" States had refused to allow their citizens to leave their country. The whole matter needed to be reviewed in the light of current realities: for example, returning to one's country was now more of a problem than leaving it, and recently some Western countries had been obliging people to leave against their will.

21. She agreed that too much time was scheduled for items 10 and 11.

22. Mr. DESPOUY suggested that in future years the statement made by the Under-Secretary-General for Human Rights at the opening of the session be distributed as a working document.

23. For several years non-governmental organizations had shown considerable interest in the issue of human rights and disability, and they naturally wished to be present when it was discussed. He therefore hoped that the relevant report would have already been distributed by 12 August, the day on which the subject was due to be considered.

24. Item 4 was not due to be taken up until the third week of the session. That, in view of the number of further developments in fields of which the Sub-Commission had been concerned, some of them urgent and of the greatest topicality, seemed to be too late. The new developments referred to by Mrs. Warzazi were cases in point. The denial of the right to asylum and mass deportations were creating an alarming situation. Item 4 should therefore be given the important place in the calendar which it deserved.

25. The CHAIRMAN said that depending on the availability of documents the Bureau would do its best to bring forward discussion of item 4, as mentioned by Mr. Despouy.

26. Mrs. PALLEY strongly supported the view expressed by Mrs. Ksentini. The Sub-Commission had last discussed contemporary forms of slavery between 3 and 4 p.m. on 29 August 1990, and the topic was now designated for half the morning of Wednesday, 28 August at the current session. The problems involved millions of people, male and female adults as well as children. Besides child labour and debt bondage there were new developments concerning the transplant of organs and the whole question of commercialized sex in a consumer society. The jurisdiction of the Working Group overlapped with other concerns of the Sub-Commission - especially as pornography touched on freedom of expression and of the press and affected personal autonomy. Attitudes were shaped by the media and there might be clashes. More than half a morning was required. The discussion should also come earlier on the agenda.

27. She noted that only three quarters of a day had been reserved for discussing the realization of economic, social and cultural rights, and it had been decided the question on human rights dimensions of population transfer including the implantation of settlers and settlements was to be discussed under that item. That crucial question required at least one and a half hours, and might actually save time on item 6.

28. Recent events had justified her concern about chemical weapons. Her understanding was that there was to be an annual report on chemical weapons, but she had seen no reference to it in the agenda. She asked whether the Sub-Commission would receive such a report and under which agenda item it would be discussed. She expressed particular concern about the use of napalm in the Gulf war.

29. In addition she asked under what item the question of humanitarian intervention would be discussed; she wished to propose that a study should be made which would form a proper basis for humanitarian intervention by the United Nations.

30. As Mrs. Attah had rightly said, apartheid would continue to concern the Sub-Commission for a long time; however, items 5 and 6 in some senses ran together, and one and a half days might not be needed for them. Some time might be taken from items 5 and 6 and from items 10 and 11 in order to look at the important question of minorities raised by Mr. Eide and the questions raised by Mrs. Warzazi. It was true, as Mr. Despouy had said, that the right of asylum was being destroyed in Europe; and the Sub-Commission had to say something on that subject.

31. Mr. SADI said that he had not realized the magnitude of the problem until he had taken part in the Working Group on Contemporary Forms of Slavery. Hundreds of thousands of girls and women were being trafficked from developing countries to other parts of the world for prostitution. Some children had been sold for their organs to be transplanted in Europe. The Sub-Commission should give the problem a higher priority; it should be allocated more time and be moved forward to reflect the sense of urgency it deserved.

32. Mr. TIAN agreed with the proposal that only half a day should be allocated to the joint meeting with CERD, since prior to the meeting there would be consultations between the two Chairmen so that the topics for discussion would be known in advance. It was too early to think of an institutionalized mechanism for the Sub-Commission and other bodies.

33. He agreed that time could be taken from items 10 and 11 because his impression was that there were no important documents for deliberation under those items. More time could thus be given to items 15, 16 and 18.

34. He also agreed that five minutes, and not two, should be allowed to Governments to make statements before votes taken concerning them. The time given to item 5 should not be shortened. In some respects it was premature to lift sanctions on South Africa, and there was concern at the scandal of government agencies there inciting internal strife. Items 5 and 6 should therefore not be combined at the present stage. Finally, since there were many studies and reports before the Sub-Commission he did not think that new studies should be introduced at the current session.

35. Mr. SACHAR did not agree that items 10 and 11 had been given too much time; they were far too fundamental to be cut short.

36. The CHAIRMAN recalled that item 10 was the item under which there were the largest number of reports. In addition to the report by the Working Group on Detention (E/CN.4/Sub.2/1991/27) there was Mrs. Bautista's report on the the application of international standards concerning the human rights of detained juveniles (E/CN.4/Sub.2/1991/24), the fourth annual report and List of States which had proclaimed, extended or terminated a state of emergency by Mr. Despouy (E/CN.4/Sub.2/1991/28), the study by Mr. Chernichenko and Mr. Treat entitled "The right to a fair trial: current recognition and measures for its strengthening" (E/CN.4/Sub.2/1991/28) and his own report on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1991/30). Items 10 and 11 had already been slightly shortened.

37. Mr. ALFONSO MARTÍNEZ considered that the time devoted to item 3 was insufficient. He entirely agreed with the view that any reduction in the attention given to racism, racial discrimination and apartheid by the Sub-Commission might be construed as implying that the problems were disappearing. Any reallocation of time could not be at the expense of those topics. He noted that about 25 hours had been allocated to items 10 and 11, whereas the item on social, economic and cultural rights had been alloted only a short time at the end of the session. Any redistribution of time would have to be based on a reduction of the time given to items 10 and 11: since the

question of the draft declaration on the protection of all persons from enforced or involuntary disappearances had been concluded, the work to be done under item 10 had really been reduced, despite the five reports mentioned by the Chairman.

38. He fully agreed with those who had spoken of the importance that should be given to the work of the pre-sessional Working Group on Contemporary Forms of Slavery. It deserved in-depth consideration and could not be properly discussed in the short time allotted.

39. The Chairman had mentioned in his opening statement the possibility of forgoing the ritual introductory statement preceding each item. The statement by the Under-Seretary-General at the current session, which had covered everything the Sub-Commission dealt with, had now made those introductory statements superfluous.

40. The question of item 19 on the right of everyone to leave any country, including his own, and to return to his country, should be postponed until the following week; it should be discussed at the next meeting, to see how progress could be made. He agreed that the problem of racial discrimination had been dealt with summarily and that the question of indigenous peoples should be given more time. With regard to the joint meeting with CERD, the fact could not be ignored that the terms of reference of that committee were quite different from those of the Sub-Commission, basically because CERD was working with States parties to a Convention and there were notable absences in ratification. The Sub-Commission had broader terms of reference which did not depend on States who had or who had not ratified a convention. There were thus major differences, and the joint meeting could therefore be made shorter. Item 4 required close consultation between the Chairman and various members of the Sub-Commission so that the Sub-Commission would have an idea of how to eliminate that recurring problem in 1992.

41. Finally, he did not think it advisable to split the discussion on item 6; an effort should be made to ensure that the thread of the discussion was not broken.

42. Mrs. WARZAZI said that she shared the concern expressed with regard to the item on the realization of economic, social and cultural rights. Last year three meetings had been devoted to that topic; at the current session the time had been shortened. The crisis in the Eastern European countries had led to general agreement that there could be no democracy without development: the number of meetings devoted to the topic should therefore be increased not reduced, since many more countries were now concerned.

43. With regard to the meetings devoted to contemporary forms of slavery, the lack of time was highly detrimental. Three years ago she had raised the question of organ transplants from children of the third world, but there had not been sufficient time for a serious study of that horrible practice, which was on the increase.

44. She entirely supported Mrs. Palley on the question of chemical weapons, on condition that if a report were produced it should include an in-depth study on the countries supplying chemical weapons and their reasons for doing so.

45. Mr. EIDE said that his argument with regard to the joint meeting with CERD was that the issues under item 5 (a) should be properly discussed at that meeting. It was therefore meaningful to see the meetings in their totality. He had suggested that if the time allotted had to be limited, the Sub-Commission should decide whether to limit the time for the joint meeting or that for item 5 (a). The total discussion time, however, should not be reduced.

46. With regard to the question of the right of anyone to leave any country, including his own, and to retu[illegible] to his country, time might be wasted if the Sub-Commission met without previous consultation. That was why he had proposed to have first an informal meeting of those who would participate in the working group in order to sort out the issues so as to make better use of the time available. There would thus be a postponement of one week but with solid preparatory work carried out in the meantime.

47. Mrs. KSENTINI stressed that special importance should continue to be placed on the question of apartheid, which would not simply disappear after a quarter of a century. It was important to examine the sequelae in the population of South Africa. Stress should also be placed on new trends such as xenophobia, and more meetings should be devoted to economic, social and cultural rights. She fully agreed with the view that a formula was needed to deal with the question of the right of asylum, which was being eroded by a tendency to turn back asylum seekers, and she also agreed with Mrs. Warzazi that the working group on item 19 should stress new trends and consider the problem of right of asylum and the sending back of those seeking asylum.

48. Mr. POSADA considered that items 10 and 11 had been allotted too much time and that much more time should be given to item 16 and a slight increase to item 19. A larger allotment should also be given to item 8 in view of its relevance to economic development.

49. Mr. SADI said that he saw little point in holding a joint meeting with CERD if such a meeting did not also consider item 5 (a) on racial discrimination.

50. Mrs. PALLEY considered that items 5 and 6 should be taken together. In cases where the discussion on an item ended early, there should be an arrangement whereby the unused time could be used by another item.

51. The CHAIRMAN recalled that, in his opening statement, he had suggested that all statements on apartheid should be consolidated under item 5 (b). The issue of apartheid was broader than the subject-matter of item 6.

52. Mr. SACHAR considered that the joint meeting should include item 6. If another body was discussing the same topic as the Sub-Commission, each should know what the other was doing in order to avoid overlap.

53. The issue of remedial sanctions must form part of the discussion on items 10 and 11. Immigrants and others were also affected by the issue of detention. It was unlikely that there would be a difference of opinion regarding substance; the question was how to meet the practical problems involved.

54. Mrs. KSENTINI considered that the Sub-Commission should continue to consider apartheid under item 6 since it was the item under which the Sub-Commission looked at policies of systematic violations of human rights.

55. Mr. van BOVEN said that there was merit in all the proposals which had been made. He would be prepared to accept whatever the officers might suggest following their study of all the comments which had been made.

56. The work of the Sub-Commission could not be reviewed in isolation from the United Nations human rights programme as a whole. The Sub-Commission was a policy body integrated into the whole field of United Nations human rights work. In that context, the Commission had asked the Sub-Commission to make a critical review of its work.

57. It was true that some informed observers regarded the Sub-Commission as a sort of runaway train, going its own way with its own agenda. Some would even prefer to see the Sub-Commission set back to the position it had occupied 30 years earlier. Such criticisms compelled the Sub-Commission to review the orientation and perspective of its work. The real question was whether the Sub-Commission was going in the right direction.

58. He wished to draw attention to three examples of how the human rights programme was qualitatively different from what it had been 30 years earlier. First, there was a new emphasis on the accountability of Governments; many supervisory bodies had been established under human rights treaties. Complaints procedures made it possible for individuals to have access to treaty bodies through the machinery of country rapporteurs and working groups.

59. The Sub-Commission was currently defending the rights and interests of vulnerable peoples. The rights of indigenous peoples had only recently been recognized by the United Nations and that aspect represented a tremendous innovation. Indigenous peoples had discovered that the United Nations was relevant to the attainment of their rights and interests. Another vulnerable group comprised exploited women and children. The working group on item 16 had made great progress in that connection. The conventions concerning the rights of migrant workers and their families and concerning refugees, asylum seekers and displaced persons were further examples of recent achievements of the programme.

60. The Sub-Commission was also deeply involved in the integration of human rights into economic and development matters. Institutions such as the World Bank and UNDP were increasingly taking human rights issues into account in their programmes. In a number of studies the Sub-Commission had stressed such dimensions through promotion of the concept of the right to development. The human rights programme had also had a long history of stressing human rights in the settlement of conflicts as for example in Namibia, Cambodia and El Salvador.

61. It was important to the work of the Sub-Commission that its working groups should continue to function.

62. A comprehensive analysis must be made before a decision could be taken as to whether in fact the Sub-Commission was a runaway train. Its working methods certainly needed improvement; the approach had already become much less academic and was currently more in touch with realities as, for example, through the mechanism of communications addressed to the Sub-Commission.

63. Mr. KHALIFA welcomed the suggestions of the Chairman for improving the Sub-Commission's working methods. He had some doubts however as to the wisdom of over-organization which could sometimes backfire.

64. He had been greatly concerned at the suggestion that the topic of apartheid should be relegated to the third week because of the unavailability of documentation. He was relieved that that eventuality had not materialized; nevertheless such a development might well have been in line with the current movement to water down the issue of apartheid and relegate it to oblivion. Apartheid continued to be alive and well and the Sub-Commission must not allow itself to be deluded that it was on the way out. He therefore agreed with all those, in particular, Mr. Alfonso Martínez and Mrs. Ksentini, who had insisted that the issue of apartheid must not be shrugged off. On the contrary, the opportunity should be taken during the current session to conduct a wide-ranging and thorough debate on apartheid so that the world could receive the signal.

65. The CHAIRMAN said that concentrating the discussion of apartheid under one item would make it possible to emphasize the aspects stressed by Mr. Khalifa. Item 5 (b) was to be given more time and its formulation broadened as a simple way of focusing attention on the issue.

66. On the issue of chemical weapons raised by Mrs. Palley, no decision had been taken as to what action should be taken to follow up the Secretary-General's report on the subject.

67. The proposals which had been made should not be regarded as a sort of manual. They were points of reference and they should be developed in a flexible manner.

68. Mr. ALFONSO MARTÍNEZ inquired what organizational measures had been taken for the joint meeting with CERD.

69. As regards the additional time to be made available to observers of States, it was his view that to add three minutes to the existing two would be too much. It would be better to provide a general framework.

70. The CHAIRMAN said that the second point raised by Mr. Alfonso Martínez would be submitted to the officers of the Sub-Commission for further consideration.

71. In reply to the first point, it was the view of the officers that the Chairman should have a preliminary discussion with the Chairman of CERD on procedural aspects of the joint meeting. The meeting would be procedural rather than substantive. It would be important as the joint meeting would be the first of its kind.

72. Mrs. ATTAH supported the proposal that half a day should be allocated for the joint meeting in view of the fact that it would be of an experimental nature.

73. Mr. ALFONSO MARTINEZ considered that members rather than officers of the two bodies should meet for some sort of a preliminary discussion. In such a group a geographical balance of members should be sought.

74. Mrs. WARZAZI disagreed with Mr. Alfonso Martínez; on the issue of racism there was no need for geographical balance. The Chairman might draw up a list of points for discussion so that members could be prepared.

75. Mr. ALFONSO MARTINEZ agreed that preliminary talks should be held between the two Chairmen as a prelude to a full meeting.

76. Mr. EIDE agreed that there should be a meeting between the two Chairmen in order to set up the framework for the joint meeting. He reminded the Sub-Commission that, during the previous year, there had already been an exchange of correspondence between the two bodies on the substance of the meeting so that some material was already available.

77. Mrs. KSENTINI agreed that the two Chairmen should meet for a preliminary discussion.

78. The CHAIRMAN announced that he would submit recommendations to the Sub-Commission following his meeting with the Chairman of CERD.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (E/CN.4/Sub.2/1990/2 and 14, E/CN.4/1991/48)

79. Mr. KEILAU (Centre for Human Rights) said that under item 3, which had been on the agenda since 1982, the Sub-Commission reviewed its working methods, programme of work and relationship with the Commission on Human Rights.

80. In connection with the item, the Sub-Commission might wish to consider the report of the Chairman of the Sub-Commission to the Commission at its forty-seventh session (E/CN.4/1991/48) and the report of the Working Group established pursuant to decision 1989/104 (E/CN.4/1990/14), both of which were available in all official languages.

81. Further, the Sub-Commission might wish to take into account Commission on Human Rights resolution 1991/56 on the work of the Sub-Commission, and Sub-Commission decision 1989/103 requesting the Secretary-General to submit to the Sub-Commission at its forty-second session a list of all studies already undertaken so as to allow the Sub-Commission to consider the possibility of drawing up a medium-term programme to ensure the participation of the greatest number of its members in that programme. That list was available in document E/CN.4/Sub.2/1990/2.

The meeting rose at 12.40 p.m.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/SR.4
22 August 1991

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 1991, at 3 p.m.

Chairman: Mr. JOINET

CONTENTS

Organization of work (continued)

Review of the work of the Sub-Commission (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.91-12655/3577B

The meeting was called to order at 3.10 p.m.

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN read out the revised timetable for the work of the current session. He said that, if there was no objection, he would take it that the Sub-Commission wished to adopt the timetable.

2. It was so decided.

3. Mr. ALFONSO MARTINEZ congratulated the officers on producing the new timetable which would contribute to improving the quality of the Sub-Commission's work. He would however request the Secretariat to inform the the Working Group on the right to leave and to return, in writing, about the time limits for the submission of draft resolutions with financial implications, as it would have only one formal working meeting.

4. Mr. SACHAR regretted that the last meeting allotted for the consideration of items 10 and 11 should be so far removed from the others.

5. The CHAIRMAN said that the decision to hold that meeting on 28 August had been motivated by the possibility of an extended meeting, which might indeed be necessary.

6. Mr. DESPOUY, referring to the decision to consider item 4 only towards the end of the session because the documentation might not be available earlier, expressed the hope that item 12 would not be introduced until all the documents were ready.

7. The CHAIRMAN proposed that, if the documentation on item 12 was not available while that on item 4 was, the order in which those two items would be considered should be reversed.

8. Following a discussion in which Mrs. KSENTINI, Mr. ALFONSO MARTINEZ, Mr. SACHAR and Mr. HELLER took part, the Chairman proposed that the discussion on item 3 should continue notwithstanding the timetable which had just been adopted and that, during the discussion, the Secretariat or the outgoing Chairman should draw up the list of practical issues which the Working Group would consider.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (continued)
(E/CN.4/Sub.2/1990/14; E/CN.4/1991/48)

9. Mr. DIACONU said that the Sub-Commission should make an in-depth study of its own future under the current item. While the opinion had recently been expressed that the Sub-Commission should no longer exist, it nevertheless had a specific role among United Nations bodies as it was the only one comprising a large number of experts of different origins, training and experience who had themselves developed their own expertise in the course of the Sub-Commission's work. That was in a way an investment in the field of human rights and should not be abandoned. At the personal level, he deplored that objective reasons had prevented him from making the contribution which he would like to have made and could have made during the four years in which he had participated in the Sub-Commission's work.

10. The work of the Sub-Commission could nevertheless be greatly improved, but it must avoid going beyond the essential concerns of the United Nations in the field of human rights by becoming involved in issues which were too easy or of fleeting or limited interest. The proper issues for the Sub-Commission in the future were economic and social rights, the problem of national minorities and the question of vulnerable groups, as well as the integration of human rights in the question of development, as Mr. van Boven had rightly emphasized. The Sub-Commission must also avoid overlap with other United Nations bodies. For example, why revert year after year to the issue of the independence of the judiciary and the treatment of offenders when those questions were studied periodically in the context of the United Nations Congresses on the Prevention of Crime and the Treatment of Offenders? On the other hand, the Sub-Commission should continue to prepare studies on the basis of the new standards set forth in the 60 or so international instruments on human rights to which the Under-Secretary-General for Human Rights had alluded. Nor should the importance of instruments on international law in general be underestimated. It would seem that those instruments, some of which had already been accepted or implemented, had not been sufficiently analysed by the Sub-Commission. Again, why had the Commission on Human Rights not entrusted the Sub-Commission with the preparation of the declarations on the question of minorities or the right to development or the Convention on the Rights of the Child when the Sub-Commission had a Working Group on Contemporary Forms of Slavery? On the other hand the Sub-Commission should not become embroiled in a multitude of issues which it did not have the resources to pursue and it should for example complete the studies which had been going on for many years on problems which had lost their importance and instead concentrate on the most urgent issues. In conclusion, he expressed the hope that the Sub-Commission would be more demanding in terms of the content and presentation of documents which it submitted to the Commission on Human Rights, as that would testify to the quality of its work.

11. Mrs. PALLEY welcomed the fact that the Commission had made it possible for the Sub-Commission to take decisions by secret ballot and that, in its resolution 1991/56, it had stressed the importance of the impartiality and independence of the experts and their alternates. By laying stress on new developments in the field of human rights in the preamble and in paragraph 14 of that resolution, the Commission had provided the Sub-Commission with a basic criterion for its future work. The Commission had placed equal stress on the systematic preparation of well-researched studies, while avoiding a proliferation of work. It was, however, to be noted that the text of paragraph 5 recommending that the Sub-Commission should, "as a general rule", propose a new study only when a study previously authorized was fully completed hinted at the possibility of certain exceptions. It was really very important that new studies should be made on the changes which had taken place in States and at the level of international organizations. It was also a fact that old concepts were currently interpreted in a new fashion. Thus, States intervened in the affairs of other States on the authorization of the United Nations Security Council while the European Economic Community was considering military intervention in a country which was not even a member of the Community, Yugoslavia: nor should the unlawful interventions in Panama, Grenada, Czechoslovakia and Hungary be forgotten.

12. As a result of that evolution and the development of the activities of the United Nations bodies, the question of the right of humanitarian intervention had arisen. In fact, under Chapter VII of the Charter of the United Nations only a threat to peace could constitute grounds for intervention and there was no mechanism in the United Nations system for dealing with genocide or major disasters. Consequently, the United Nations itself had sometimes interpreted the provisions of the Charter, for example in deciding that the racial discrimination applied in the former Southern Rhodesia had represented a threat to international peace. The Sub-Commission must therefore study all those factors and evaluate their implications in order to determine whether a right of humanitarian intervention really existed and, if so, who could intervene, in what circumstances and on the instructions of which body (Security Council or General Assembly). In any case, the current situation could not continue and the Sub-Commission should entrust the study of that urgent question to two or three of its members or their alternates.

13. Mr. TURK, like Mrs. Palley, had been concerned by some parts of Commission on Human Rights resolution 1991/56, which raised doubts about the work of the Sub-Commission. Although he himself, at previous sessions of the Sub-Commission and the Commission on Human Rights respectively, had pointed out that the Sub-Commission was adopting fewer resolutions than before, particularly on country situations, the Commission had not responded and the reference, in its resolution, to the growing number of resolutions and decisions adopted each year by the Sub-Commission had been retained. The Chairman of the Commission on Human Rights might perhaps raise that aspect of the issue when he addressed the Sub-Commission. Moreover, by stressing the importance of new developments in the field of human rights, the Commission had invited the Sub-Commission to analyse and select its subjects with care, in order to avoid as a general rule any proliferation.

14. Mrs. Palley had been right to raise the question of humanitarian intervention which had been particularly relevant during the last few months and which he himself had had an opportunity to discuss recently during a conference organized on the topic at the University of Geneva. In a study on the issue a few years earlier, he had emphasized that, while concern for human rights was the basic motivation for humanitarian intervention, at the present time political considerations were the dominant factor in all such cases. The Sub-Commission should therefore approach the question from a new angle, so that humanitarian concerns would take precedence over political considerations. In that connection, he wished to stress that the military intervention envisaged in the case of his own country, Yugoslavia, was also a response to concerns which were in essence political. Such a serious question might possibly give rise to informal consultations.

15. To implement Commission resolution 1991/56, which called upon the Sub-Commission to consider elaborating procedures with a view to ensuring the earliest possible completion of studies, he suggested, first, that all studies should be systematically preceded by a feasibility study, without financial implications. Moreover, at each of its sessions, the Sub-Commission might request two experts to make an in-depth analysis of the studies undertaken. As to the length of the studies, the present three-year cycle was reasonable on condition that it could be extended in cases where for objective reasons

it might be impossible to finish the work within the time-frame scheduled. If a study was not completed after five years, the special rapporteur in question should have to submit a document explaining his special difficulties. Lastly, the Sub-Commission should devote a certain amount of time to considering the reports once finished so that the relevant conclusions and recommendations could be finalized. In conclusion, he considered that the Sub-Commission ought not to disappoint the Commission on Human Rights which expected it to produce studies of high quality.

16. Mr. SABOIA recalled that the Sub-Commission's role was to provide the Commission with ways and means of improving the protection of human rights and that Governments as well as non-governmental organizations had acknowledged that it had discharged its mandate well. However, some doubts and criticisms had been expressed; the Sub-Commission was said to be adopting too many projects, thus duplicating the Commission's work and running the risk of being "political"; it was also in danger of departing from its mandate. He believed that although the former criticism had long been justified, it was increasingly less so. As to the latter, he considered that the majority of the reports provided fresh and very useful ideas about human rights problems and that the profound changes in international relations - the end of the cold war, the Gulf crisis and so on - had an influence on the reality of human rights that the Sub-Commission could not ignore. It must now take account of the new distribution of political powers and the importance assumed by humanitarian law. Disappointing as the international system of assistance to distress was, it had operated according to international standards, those of the United Nations. Mrs. Palley had been right to warn against using the humanitarian factor for political ends. Mr. Türk had noted that humanitarian intervention also responded to political concerns. Their two statements were yet another reason for the Sub-Commission to study human rights in the light of the new world that was coming into being. It was right for it to assume a guiding role in that connection, in particular by taking part in the preparations for the Conference on Human Rights.

17. Mrs. DAES recalled that two years earlier the Under-Secretary-General had said that the Sub-Commission was a reservoir of experts in the forefront of thinking on human rights. It must therefore continue to exist. At the present session the Under-Secretary-General had made an introductory statement which should guide the Sub-Commission's work, in particular on item 3. She thanked Mr. Türk, who had defended the Sub-Commission very well in the Sub-Commission's report to the Commission.

18. In connection with Commission on Human Rights resolution 1991/56, she first thanked the Commission for its unanimous support for all the resolutions on the work of the Working Group on Indigenous Populations and those dealing with the recognition and protection of the rights of indigenous populations. Paragraph 15 of that resolution, which contained high praise for the working groups, was also to be welcomed. However, the resolution also contained provisions repeating almost word for word some of the Commission's previous resolutions, for instance, paragraph 13 on the proliferation of studies and draft resolutions or decisions. In fact at its forty-seventh session the Commission had itself adopted 123 resolutions and decisions not all of which she believed to be necessary. As to the practice of communicating draft resolutions or draft decisions of the Sub-Commission to the Commission for

information, decision or consideration, that was a way of cooperating with the Commission which should not be interpreted as interference by the Commission in the work of the Sub-Commission. She agreed with Mr. Saboia that the Sub-Commission had a role to play in the Conference on Human Rights. Lastly, as far as humanitarian intervention was concerned, the Sub-Commission had an obligation, as Mrs. Palley had said, to consider the question from all angles and prepare a paper on it.

19. Mr. EIDE unreservedly endorsed Mr. van Boven's remarks that morning about the work done by the Sub-Commission. He stressed the extreme importance, already underlined by Mrs. Palley of the question of humanitarian intervention - which also came within the Sub-Commission's sphere of competence under item 14. He was convinced that there was an increasingly strong link between respect for human rights and peace. On various occasions recently the United Nations had cooperated with the parties concerned either by supervising elections or by acting as intermediary in peaceful negotiations, thus making a contribution to the peaceful resolution of conflicts and bringing respect for human rights to the fore. The consequences of that new state of affairs should now be studied in depth.

20. The question of humanitarian intervention arose in extreme cases and consideration must be given to all that could be done to prevent a situation from degenerating before it was contemplated. In Namibia and El Salvador such efforts had been successful. Humanitarian intervention must not be conceived as it had been in the nineteenth century. Today a new point of view was necessary. It was legitimate for the international community to concern itself with the non-observance of human rights, for that was not confined to a single country but involved a whole region, bringing in its wake a flood of refugees and finally affecting the whole world, which was rightly concerned with the way in which human rights were implemented. It was appropriate to act if Governments violated such rights in a way that was unacceptable in the twentieth century. However, it was important to be very watchful, so as not to deflect that action from its objective, and all means must be strengthened to ensure that action did not have to be used. Those means were cooperation and communication not only with Governments but also with liberation movements and others, which often behaved like tigers because they had to fight with ferocious Governments. Today, in the twentieth century, one must look forward to the twenty-first century and humanize political relationships.

21. Mrs. WARZAZI, reverting to Mrs. Palley's statement, wondered whether a right of so-called "humanitarian" intervention should really be established. When the principle had been formulated three years earlier, it had been specified that such intervention would only apply to cases of natural disasters. The distressing case of Iraq was something new in international usage. The right of intervention did not exist in international law: it had not been discussed or negotiated at the highest level, namely in the Sixth Committee, and it had not even been discussed at the humanitarian level in the Third Committee. It might give rise to protracted discussions, for the question of human rights did not arise and was not resolved in a standardized way; the world was a varied place and criteria of judgement varied according to where one happened to be. The situation in Europe or in the United States, where economic democracy had bred political democracy, could not be compared with the situation prevailing in countries which still had all the way to go

on the road to democracy. Moreover, the interpretation of an ideal right of intervention could not be based on the Charter of the United Nations; quite the contrary, for the Charter established the principle of non-intervention. Based on actual experience in Iraq, the right of intervention, introduced by the Security Council in the specific case of that country was indeed politically motivated. It had operated in favour of some (the Kurds) but not of others (the Shi'ites). It would therefore be extremely interesting to discuss that matter. It should be clear that such a right if one day established by international humanitarian law should be able to be invoked by all countries, including by those with no military potential whatsoever and not just a few with exclusive rights to it. The new world order, should it come about, ought to ensure that the sacrosanct principle of equality of countries and peoples, great or small, prevailed. Only then could Mrs. Palley's proposal be discussed. If that principle of equality of countries and peoples was not respected, any country might attack its neighbour under cover of humanitarian intervention.

22. The CHAIRMAN wondered whether item 3 was the proper context for the present discussion. The point at issue was whether a topic or a new development should be taken up. It would seem that the discussion was going beyond guidelines to be given to the Working Group. He would like the discussion to be resumed under item 4 and the Secretariat to sum up the question, in fact, every two years the Secretary-General had to report to the General Assembly on the implementation of the resolution in question. He therefore suggested that the Sub-Commission should resume its consideration of item 3, temporarily discontinuing consideration of the question of the "right to intervention" under that item.

23. Mrs. KSENTINI formally opposed the study proposed by Mrs. Palley. She fully endorsed the concerns expressed by Mrs. Warzazi and considered that unless certain conditions were satisfied to ensure that every State, small or large, was able to exercise the right to intervention, the Sub-Commission should not embark on a study that might give the impression that it agreed to the establishment of the principle.

24. Turning to more practical questions, she considered that the criticisms addressed to the Sub-Commission had to be answered. First of all, the issue of the proliferation of resolutions did not seem really justified, for the Commission had never censured any resolution by the Sub-Commission. At all events, between the Commission and the Sub-Commission, there existed not opposition but a fully necessary complementarity. As regards the proliferation of studies, much indeed remained to be done. It would be entirely possible to improve the working methods by deciding on the advisability of carrying out a study; for that there had to be available a list of reports already made. Time and the necessary human and financial resources were also required to consider ongoing studies, and no new study should be undertaken before the previous one had been concluded. Similarly, there would have to be a feasibility study before any new study was carried out. The Sub-Commission might consider establishing a medium and long-term programme on studies to be undertaken, and either place the question squarely on the agenda or make it a component of agenda item 3 or 4. With regard to the choice of experts to whom a study should be entrusted, she considered it important to make sure there was an equitable geographical distribution. For

example, a study might be entrusted not to a single expert but to two or three. She also raised various other questions: the appointment of alternates in charge of carrying out studies; the consideration and study of preliminary and interim reports; material and human assistance granted to the special rapporteur commissioned to carry out a study; follow-up of studies and recommendations. In that regard she expressed regret that the special rapporteur was no longer entitled to submit his study himself to the Commission. She also referred to the publication of studies, which should be accompanied by publicity in order to make them better known. Finally, the Sub-Commission should create machinery for following up the recommendations appearing in a study, at a pace to be determined.

25. Mr. SADI said that he would like the statements by Mr. Martenson and Mr. Türk to be treated as official documents. As to the question of whether humanitarian intervention should be considered under agenda item 3, that depended on its interpretation. A distinction had to be made on one hand between humanitarian intervention and the question of human rights, and on the other hand between military and non-military intervention. If non-military intervention was involved, it should indeed be considered under agenda item 3, because the Sub-Commission itself intervened in the affairs of States by investigating the human rights situation and that intervention was justified, for sovereignty was no longer an absolute value.

26. Mr. CHERNICHENKO considered that the Working Group was concerning itself with a narrower range of human rights issues than was envisaged in the agenda. He himself would like to raise broader issues. If the basic task of the Sub-Commission was to depoliticize its work, its working methods had to be improved, for the more precisely defined the legal framework, the less danger there would be of politicization. He advocated the establishment of machinery to make it possible to react to urgent and unexpected situations. With regard to the relations between the Sub-Commission and the Commission, he recalled that with effect from 1992 the number of members of the Commission would increase to 53. That was a fundamental change and not a simple matter of arithmetic. It was an opportunity for rethinking the entire system of human rights bodies. It might even be necessary to begin with the Economic and Social Council itself. The jurisdiction of the latter was indeed of many kinds, and it might be possible boldly to consider dividing it in two. There would then be an Economic Council and a Social Council, the latter responsible for human rights. The Commission on Human Rights might then merge with the Social Council, and the Sub-Commission would be renamed Commission; but it would be an entirely different Commission, whose membership would increase slightly, and which would be an expert body of the Social Council.

27. The CHAIRMAN observed that that would be indeed a far-reaching programme, comparing it with the medium and long-term programme proposed by Mrs. Ksentini.

28. Mrs. WARZAZI considered that that proposal had come very late and that the internal rationalization that had taken place in the Economic and Social Council had been very harmful to human rights.

29. Mr. HELLER, reverting to the criticism of the Sub-Commission made by the Commission, recognized that one thing was certain: United Nations human rights activities were not sufficiently structured; in order to redress that

situation, the Commission might give more attention to the World Conference on Human Rights of 1993, which offered the Sub-Commission the opportunity to present its ideas more concretely. The Preparatory Committee of the Conference had, furthermore, invited the Sub-Commission to attend as an observer. A working group on that Conference could perhaps be set up. He endorsed several of the ideas put forward by Mrs. Ksentini with regard to the organization of work. On the question of humanitarian intervention, he shared the concerns of Mrs. Warzazi and Mrs. Ksentini.

30. Mr. DESPOUY said he was aware that agenda item 3 dealt mainly with the guidelines given by the Commission to the Sub-Commission and to the Working Group on methods of work, and that some of the comments by preceding speakers went far beyond those questions. However, it was difficult not to reflect on some of the questions that would be considered by that working group and on a few new topics that seemed to be important for the Sub-Commission's work. In particular, it was appropriate to look into the question of the coordination and harmonization of all the machinery for human rights protection. Instead of creating new bodies, an attempt had to be made to rationalize the work of those that existed. In that regard, the experience of the Sub-Commission and CERD constituted a precedent and might serve as a model for other bodies. The relations between the Commission and the Sub-Commission had to be better defined. The Commission, seeing that it would soon number 53 members, was a very wide-ranging body, which was not always very well aware of what it could expect of the Sub-Commission; that was reflected in a proliferation of resolutions and decisions. The Sub-Commission was an expert body that had to act as such and which might very well, as Mrs. Warzazi had said, formulate expert opinions on the decisions taken by the Commission and even by the Economic and Social Council on the way to improve the system of human rights protection.

31. Regarding the idea of humanitarian intervention, it was hard to say at the moment whether the Sub-Commission should or should not take a stand on that subject. The changes that had come about on the international scene in recent years had unfortunately not been accompanied by a positive evolution in the humanitarian sphere, particularly with regard to the question of asylum. There was no doubt that the Sub-Commission should focus on that issue. According to reports from the Office of the United Nations High Commissioner for Refugees, in some regions of the world thousands of persons had been forcibly returned to their countries of origin, where their lives were in danger. The right of asylum was currently being violated in complete silence, while the idea of humanitarian intervention, which had strong political connotations, was being glorified. Should the Sub-Commission therefore try to give that idea a legal basis, or concern itself instead with the various aspects of the current crisis in the humanitarian sphere? The importance and priority to be given to each question had to be carefully considered.

32. With regard to the contribution that the Sub-Commission experts might make to the 1993 World Conference on Human Rights, he would like to know under which agenda item experts who wished to speak on that topic might do so.

33. The CHAIRMAN thought that it would be more appropriate to consider the two issues of substance referred to by Mr. Despouy, namely, the right of humanitarian intervention and the right of asylum, under agenda item 4, which

dealt with the consideration of further developments in fields with which the Sub-Commission was already concerned, or under agenda item 19 which dealt with the right of everyone to leave any country, including his own, and to return to his country, and for the moment, he would like speakers to confine their statements to item 3. He also drew the attention of participants to the importance of document E/CN.4/Sub.2/1991/11 which contained specific suggestions in respect of item 5 (a), on which it would be desirable for the Sub-Commission to take a position.

34. Mr. ILKAHANAF acknowledged that the question of the right of humanitarian intervention was a sensitive one, for it had strong political connotations, but it was also a topical issue discussed in many international bodies, and the Sub-Commission could also be expected to take it up. It would also be useful for the Sub-Commission to study the problems of asylum caused by the human rights violations committed in many countries. The discussion should not be confined to Iraq. In his own country hundreds of thousands of persons had been exterminated without the international community deeming it necessary to intervene, and thousands of others had had to seek refuge in neighbouring countries. He stressed that human rights standards were universal and applied without distinction to all peoples in all regions of the world. There was no such thing as different categories of rights or norms for developed and developing countries; he therefore did not understand very well what Mrs. Warzazi had meant. He reserved the right to return to that question under agenda item 4 or 6.

35. Mr. SACHAR took the view that the question of humanitarian intervention should not be considered under agenda item 3. He wished, however, to point out the importance of making a distinction between intervention by Governments, which could in no circumstances be admitted, whether it took the form of military or of any other kind of intervention, and intervention by non-governmental organizations to uncover human rights violations. Furthermore, there was no doubt that human rights standards were universal and valid for all parts of the world.

36. As far as the Sub-Commission's methods of work were concerned, it was his understanding that the Commission on Human Rights was complaining about the proliferation of reports and studies; he therefore wondered why the Commission had decided to create, for a three-year period, a working group to investigate cases of arbitrary detention, as indicated in paragraph 150 of the annotated agenda (E/CN.4/Sub.2/1991/1/Add.1) when the Sub-Commission had already undertaken a study of the subject which the Commission should therefore have invited it to continue. That seemed to him to be a typical case of duplication, and he would like to have an explanation of it.

37. The CHAIRMAN explained that there was no danger of overlapping, in so far as the report commissioned by the Sub-Commission (E/CN.4/Sub.2/1990/29) was essentially concerned with administrative detention and that, following the debate to which it had given rise, the Sub-Commission had considered it necessary to deal with all forms of detention, whether or not they were administrative, if they were arbitrary. In his capacity as Special Rapporteur, he had therefore drafted an addendum to the report in question (E/CN.4/Sub.2/1990/29/Add.1) in which he had proposed the establishment of a

working group on the model of the Working Group on Enforced or Involuntary Disappearances - in other words, a working group that would collect information on specific situations. The Commission had merely followed up that proposal. That did not mean that the Sub-Commission was no longer dealing with arbitrary detention at all. It could continue to consider so in connection with other work.

38. Mr. ALFONSO MARTINEZ wished to indicate, to begin with, that he was totally opposed to the question of the right of humanitarian intervention being considered by the Sub-Commission, which did not seem to him to be the most appropriate forum for that purpose. He would come back to that point when agenda item 4 was considered.

39. As far as item 3 was concerned, he recalled that, according to an article that had appeared in the Geneva press, the observer for the United States of America, Mr. Abram, had stated at a press conference that he wanted the Sub-Commission to concern itself essentially with the matters falling under the mandate which it had originally been given and which was the justification of its existence. He therefore placed great hope in the Working Group on Methods of Work, although, in his opinion, the problems facing the Sub-Commission were not connected with its methods of work or with the proliferation of the decisions which it took or of the studies which it carried out, but with the approach which it adopted in its work.

40. Furthermore, in his opinion, there was no conflict between the Commission and the Sub-Commission. Since 1988 the Commission had been closely following the studies which the Sub-Commission had decided to make and had regularly asked it, in all the resolutions which it had adopted, not to undertake any new study before completing those which were under way. If, however, an analysis was made of the resolutions adopted by the Commission in 1990 and 1991, it would be found that, while making the same recommendations to the Sub-Commission, the Commission had proposed in 1990 that three further studies be made - on the right to freedom of opinion and expression, on compensation for victims of gross violations of human rights, and on discrimination against people with AIDS - as well as three further studies in 1991 - on the right to a fair trial, on the independence and impartiality of the judiciary, and on human rights and the environment. In his opinion, there was no contradiction between a series of logical and sensible recommendations made by the Commission to the Sub-Commission and decisions to undertake further studies. Consequently, there was no reason to speak of a disagreement between the two bodies. There was no doubt that all questions concerning human rights fell within the Sub-Commission's mandate and that the Sub-Commission should be able to consider them from its own standpoint. In that connection, it was important that the Working Group, in its deliberations on the Sub-Commission's future methods of work, should take into account the need to restore a balance between the two major categories of rights established in 1966 - namely, civil and political rights on the one hand and economic, social and cultural rights on the other - and to emphasize the fact that although those rights were universal in the sense that nobody should, in any country, be arbitrarily deprived of his right to life or subjected to slavery or torture, for example, the way in which their content was interpreted varied according to the cultural and legal traditions and legislation of each country. Finally, the Working Group ought to consider how the Sub-Commission could contribute to the

preparations for the World Conference on Human Rights in 1993. It should also take a decision on the new draft rules of procedure submitted by Mr. Hatano, and it would be useful if it could give some indication as to what would happen to item 4.

41. Mrs. PALLEY recalled that, in his first statement at Geneva, the observer for the United States of America mentioned by Mr. Alfonso Martínez had spoken very sarcastically about the Sub-Commission and had requested it, as was shown by the summary record of the meeting held on 8 August 1989 (E/CN.4/Sub.2/1989/SR.3), to inform him in good time of the measures which it would take to deal directly with questions such as the deliberate interruption of food supplies. It might, perhaps, be appropriate for the Sub-Commission to give effective consideration to that matter.

42. The CHAIRMAN recapitulated the specific measures which had been explicitly proposed on the subject of reports. It had been suggested that it be made standard practice to draft a feasibility study in the form of a working paper without financial implications before a decision to prepare a report was taken; that, "commentators" responsible for drawing attention to points in reports that could give rise to discussion be appointed; that the preparation of an annual updated list of current and completed studies be made standard practice, stating whether or not they had been followed up; that no new studies be undertaken until the studies currently being prepared had been completed; that a better geographical distribution of rapporteurs be brought about; that the advisability of entrusting studies to alternates be examined; that the publicity given to studies be improved, particularly through the publication of summaries; that machinery to ensure that recommendations were followed up be established; and that reports entailing follow-up action, either annual or periodic, be updated. The other measures proposed concerned the reform of the Economic and Social Council, the advisability of establishing a working group with a view to the preparations for the World Conference on Human Rights in 1993, and the establishment, by the Working Group on methods of work, of a list of subjects falling under agenda item 4. It had also been requested that the Working Group on methods of work should have available to it, as working papers, the statement by the Under-Secretary-General for Human Rights, the statement by the Chairman, the report of the Working Group at the previous session, and the resolutions of the Commission on Human Rights in which the Commission made recommendations to the Sub-Commission.

43. Mr. CISSE (Secretary of the Sub-Commission) indicated that the Working Group on Detention would consist of Mr. Despouy, Mr. Hatano, Mr. Ilkahanaf, Mr. Treat and Mr. Türk; the Working Group on the Sub-Commission's methods of work of Mr. van Boven, Mr. Chernichenko, Mrs. Ksentini, Mr. Saboia and Mr. Sachar; and the Working Group on the right to leave and to return of Mr. Alfonso Martínez, Mrs. Attah or her alternate Mrs. Mbonu, Mr. Eide, Mr. Maxim and Mr. Sadi.

The meeting rose at 6.10 p.m.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/SR.5
9 August 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 5th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 August 1991, at 10 a.m.

Chairman: Mr. JOINET

CONTENTS

Elimination of racial discrimination

(a) Measures to combat racism and racial discrimination and the role of the Sub-Commission

(b) Adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist and colonialist regime of South Africa

---

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.91-12671/3516B

The meeting was called to order at 10.10 a.m.

ELIMINATION OF RACIAL DISCRIMINATION (agenda item 5)

(a) MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUB-COMMISSION (E/CN.4/Sub.2/1991/11 and 12; E/CN.4/Sub.2/1989/8 and Add.1; E/CN.4/1991/63 and Add.1)

(b) ADVERSE CONSEQUENCES FOR THE ENJOYMENT OF HUMAN RIGHTS OF POLITICAL, MILITARY, ECONOMIC AND OTHER FORMS OF ASSISTANCE GIVEN TO THE RACIST AND COLONIALIST REGIME OF SOUTH AFRICA (E/CN.4/Sub.2/1991/13 and Add.1)

1. Mr. KEILAU (Centre for Human Rights), introducing agenda item 5, said that in its consideration of agenda item 5 (a) the Sub-Commission might wish to take into account General Assembly resolution 45/105 of 14 December 1990 and Commission on Human Rights resolution 1991/11, both referring to the Second United Nations Decade to Combat Racism and Racial Discrimination.

2. Turning to agenda item 5 (b) he recalled that the item had been discussed by the Sub-Commission since 1973. In 1974 the Sub-Commission had appointed a Special Rapporteur on the item. It now had before it the updated report prepared by the Special Rapporteur, Mr. Khalifa (E/CN.4/1991/13 and Add.1). He also drew the attention of the Sub-Commission to General Assembly resolution 45/84 of 14 December 1990 and to Economic and Social Council resolution 1991/26.

3. Mr. KHALIFA, Special Rapporteur, introducing his updated report (E/CN.4/Sub.2/1991/13), said that it did not differ substantially from the text he had submitted the previous year, first because what needed to be added was professional economic analysis, which was not his province, and secondly because the situation was in constant evolution and anything he might have added would by now be outdated.

4. As for the list itself (E/CN.4/Sub.2/1991/13/Add.1) the current update was very particular. It was no longer the time for finding out who supplied whom with what, but rather to tear down the arguments of the vicious offensive waged by apartheid perpetrators and their supporters and sympathizers. The Sub-Commission had to weigh its judgements against the background of the world apocalypse and the consequences of the Gulf war; it had to see the drops of truth which filtered down from a huge mass of faked material and distinguish a dash of honesty and morality from a mass of fraud and misinformation. Since the Sub-Commission's previous session, the world had changed beyond recognition and events in South Africa had put a totally new face on the issue of apartheid. Those new perspectives had to be reflected in the updated report. At first glance, one might be tempted to think that apartheid was on its way out and that South Africa had finally seen the light, thus tempting those who had imposed sanctions to drop them and that in that logic, a list of those involved with South Africa had more or less lost its rationale. Upon reflection, however, those premises were far from correct. On the other hand, it would not be wise to concentrate on adding to or subtracting from the list, the real battlefield having become the understanding and sound evaluation of the recent events in or messages emitted from South Africa while keeping the list as a weapon of proven effectiveness together with other forms of peaceful pressure on South Africa.

5. Once it was realized an honest dismantling of the ugly machine of apartheid was far away, that South Africa's main concern was to get off the hook and that what had happened so far was far from irreversible or irrevocable, it could be safely assumed that maintaining the guilt-factor underlying the listing should become a prime target. It was naive, to say the least, to consider that recent developments in South Africa constituted an "irreversible" trend justifying the lifting of sanctions, because every single step forward that South Africa had taken could be reversed. The state of emergency could be reimposed, political parties could again be banned, liberated political prisoners could be sent back to prison and apartheid laws could be re-enacted or replaced by similar sham legal measures. As long as whites were the constitutional law-makers and administrators, and were the sole police and military commanders, everything was reversible. The recently uncovered secret South African Government funding of the black political movement Inkatha, the tip of an accidentally discovered iceberg, pointed to the kind of deal South Africa intended to strike and the kind of promise it could give. Several weeks before the scandal had been admitted by the Government, reports quoted Mr. Nico Basson, a former member of the South Africa military intelligence (SADF) as saying that SADF had bought AK-47 rifles and used them to arm Inkatha, and that the violence which had left some 1,800 people dead since last August in the Johannesburg area had been deliberately orchestrated by SADF. The "black-on-black" violence, spreading from Natal to Transvaal, devastating townships such as Soweto, Toboza and others, was threatening to divide the ANC, PAC, and Homeland leadership that had to manage the final mile on the road to liberation, and it was easy to see all along the special role of the South African police in aggravating the situation, as was pointed out in a judicial report issued early in September 1990 sustaining the accusations made by ANC and others that the police had behaved in an undisciplined and hostile manner during recent violence in the townships. Naturally the South African police denied being partisan. But the fact remained that they had traditionally been servants of white supremacy and the strong arm of the apartheid credo since its inception. The South African Government had been caught red-handed in contradictory arguments and excuses that defied belief. There was no doubt that the black bloodbath was a last-ditch effort by certain government and reactionary elements to delay the day of deliverance from the immoral system of apartheid.

6. Sanctions had clearly damaged the South African economy: they had cost South Africa $US 16 billion in foreign exchange since 1985 and halved the annual growth rate. During those five years, investors had withdrawn 80 per cent of the capital they had poured into the country between 1960 and 1984. Inflation in South Africa was around 14 per cent and little economic growth was forecast during the current year. It had been proved beyond the shadow of a doubt that the financial pinch had brought South Africa to take a less arrogant attitude.

7. Suddenly, in April 1991, EEC foreign ministers had agreed to lift a 1986 Community ban on imports of South African iron, steel and gold coins. In December 1990, they had lifted a ban on new investments. Then the United States had hastened to lift the sanctions in a manner totally incompatible with its major and bold role in imposing them, and without a careful and serious scrutiny to ensure that the requirements for lifting

sanctions had been totally met. Even the Prime Minister of Canada had expressed his view that the United States Administration had acted rather hastily. The sanctions imposed by the United States in 1986 prohibited imports of South African coal, textiles, iron, steel and agricultural products, and had also banned exports of oil to South Africa.

8. Other sanctions, embodied in different legislation would remain in effect, with United States arms sales to South Africa still banned, along with export-import bank loans and United States-backed loans from IMF. However, the astonishingly premature lifting of sanctions by the United States had provided South Africa with an omelette much larger than the few eggs South Africa had broken. It was a glimpse of post-Gulf-war politics: with the Third World muted and paralysed, one could do as one pleased.

9. Even Switzerland had already abolished its one limitation in the economic sphere: that capital exports to South Africa should not exceed 300 million Swiss francs. Denmark, however, was to be commended for its firm stand against any relaxation of sanctions, while Finland had chosen to abandon the struggle during the last mile by lifting its ban on imports and exports to South Africa: restrictions on payments and credits and financial guarantees related to trade with South Africa would also be lifted. Those were just a few examples of reactions: the Special Committee against Apartheid was monitoring the situation day by day, and following its directives, the Centre against Apartheid was constantly providing facts and figures. The Commission on Transnational Corporations at its seventeenth session held in April 1991 had also noted the evolving situation in South Africa but had called upon all transnational corporations to stop immediately all forms of trade and economic links with South Africa and any operations there; it had also called upon all multilateral financial and development institutions to cease any kind of support of, or collaboration with, South Africa. The Commission still reviewed a yearly update of transnational corporations with interests in South Africa.

10. He drew attention to the 1991 ILO publication Financial Sanctions Against South Africa, a report of a study concluded under the auspices of a group of independent experts appointed by the ILO Governing Body in 1989. That body had so far held six meetings, the last one in New York in April 1991. The Sub-Commission should be proud that Mr. Van Boven served on that expert group of three and was its convener. ILO was to be commended for its ongoing concern and serious efforts. The ILO's objective report confirmed the effectiveness of financial sanctions and their negative impact on the South African economy. In fact, the unwinding of sanctions had met with no approval inside or outside the United Nations. The Council of Ministers of OAU held in Abuja, Nigeria, in May 1991 had decided that, in the absence of a negotiated settlement, African States should continue to support the oppressed population of South Africa on all fronts, including that of armed struggle, and had called upon the international community to maintain sanctions in line with the United Nations Declaration on Apartheid. It had also strongly condemned the growing military and nuclear cooperation between the Pretoria regime and zionist Israel as well as the growing military cooperation with Taiwan. Immediately afterwards the OAU Assembly of Heads of States and Governments had adopted the Abuja Declaration on South Africa which had taken the same firm position regarding sanctions.

11. It was true that with the repeal of apartheid laws, the racist system lost the force of law. Statutory apartheid was largely gone but constitutional apartheid, de jure, lingered on with the absence of the right to vote. Moreover, de facto apartheid was still present in all its ramifications. Proclaiming racial equality did not mean the ceasing of racial discrimination, not to speak of racial prejudice. The legacy of apartheid could be perpetuated in education, economy, opportunities and social models. A long procession of De Klerks could perpetuate apartheid for another 50 years. A constitution based on justice and equality was a sine qua non for change. Change depended on how constitutional precepts were implemented and by whom. There were, for example, separate education departments according to race, and of course a great disparity in spending on education. Even if constitutional apartheid were done away with, institutional apartheid remained. Huge injustices in all walks of life had been perpetrated during four decades of apartheid: would they be redressed or compensated? The United Nations seemed to have acquired lately a certain liking for compensation and indemnisation: would it press for compensation for the entirely dispossessed South Africans?

12. It was true that the repeal of the Population Registration Act and other acts was a step in the right direction. Yet, even a constitutional reform could be vetoed by the machinery empowered by the current Constitution.

13. To scrap the Constitution now would nullify the parliamentary system through which the country was run; to retain it meant perpetuation of racial classification and the exclusion of blacks from the voters' rolls. The irony would then be that the Azanian people would be given only one choice at best: to negotiate democracy by way of undemocratic means.

14. The power-sharing process would unquestionably suffer from the stampede to lift sanctions. There were still many dragons to slay on the way to constitutional talks and a new non-racial constitution. But once the leverage of sanctions was dropped it would be more probable that the pace of change would change.

15. It had never been intended that sanctions should remain until all racism was wiped out. All that was needed was the establishment of the constitutional machinery that promised such accomplishment in the imminent future. No purpose would be served if sanctions were lifted before there was a new constitution.

16. The present was not the time to remain silent. Strange as it might sound, apartheid had never been stronger or firmer. All that had happened was a change of tactics. Scanning the situation without naivete, a "sting" operation might be detected, comprising the proclamation of the death of apartheid through the abolition of petty apartheid and the repeal of the basic laws while keeping de facto apartheid almost intact.

17. At such a critical moment, when the forces of apartheid and their allies and sympathizers were waging their "soft war" to pacify Africa and deceive the world, it was essential to stand fast, to maximize efforts and to pursue the fight unrelentlessly.

18. The defeatists must not be listened to nor the simple-minded followed, nor must the world fall prey to deception. To damp down the issue would be to destroy the momentum and eventually to lose the cause. The international community must beware of a growing indifference, brought about by the carefully orchestrated scheme, backed by certain factions of the all-powerful media, to portray the case as one that was about to be dismissed. It was very obvious that South Africa was being whisked out of the courtroom with a sentence of not guilty before the trial had come to an end.

19. The international community must not entertain any illusions. It was not true that everything was going well in South Africa. The struggle for freedom from apartheid must go on. The international community should sustain its pressure. If South Africa was trying to appear to be "rehabilitated" it must be asked what it was doing, not for, but to its people, turning brother against brother, instigating sibling massacres, paying blood money to set up bloodbaths and discredit non-white citizens. There was no evidence of a change of heart on the part of South Africa; only a change of tactics.

20. At the previous session he had said that one more year could show whether South Africa would follow the course of redemption or deception. There was no question about it now; the matter had become even bigger than the South African regime. He would rather not refer to a "conspiracy" but rather to a well worked-out scheme agreed upon among those who favoured the status quo in South Africa. Plastic surgery could enable South Africa to be readmitted to the world's civilized community and even enable it to play the role of mentor in the rest of the continent.

21. Before concluding, he wished to report to the Sub-Commission on its resolution 1990/3 adopted the previous year asking the Secretary-General to arrange with the South African authorities for him to visit South Africa in order to acquire a full-circle impression of the situation. He had, in fact, been monitoring developments in the course of the year and was convinced that the situation was still too mercurial and unsettled to make the visit viable. He had informed the secretariat of his views and thoughts that maybe at a later stage during the course of the current year, such a visit could prove possible and useful.

22. The mission sent by the Secretary-General to South Africa in June 1990 had been very timely. That mission had given a concise, learned and highly instructive picture of the situation. He would nevertheless have wished to find more emphasis placed on the crucial question of sanctions, which had been barely touched upon and which, in such a high-level testimony by a high-powered United Nations delegation could have been very beneficial. He believed that, if he was permitted to visit South Africa, he might be able to return to the Sub-Commission with a better and more polished picture.

23. Mr. TREAT said that the world community had long expressed its abhorrence of apartheid. South Africa's apartheid system denied the most basic human rights to the majority of its population. The theory and practice of apartheid offended the core principle of non-discrimination embodied in the Charter of the United Nations and other basic instruments. The Universal Declaration of Human Rights had set forth basic standards of human dignity and had proclaimed that those standards should be applied without distinction of

any kind, such as race, colour, or national origin. The same principle of non-discrimination had been carried further in later instruments such as the International Covenants on Human Rights and the Convention on the Suppression and Punishment of the Crime of Apartheid.

24. The Sub-Commission should praise the recent progress that South Africa had made in dismantling the legal structures of apartheid. The Government had repealed repressive legislation, released some political prisoners and permitted some exiles to return. Yet, those efforts had thus far failed to bring about the fundamental changes necessary to end the apartheid system. Hundreds of political prisoners remained in prison and ongoing trials continued to generate new political prisoners. Political exiles faced bureaucratic obstacles to their return and uncertainty as to their status. Despite the long-awaited repeal of racist laws, some of their more repressive features remained in place. Most discouraging was the fact that currently there was still no new constitution and black South Africans were still denied the right to vote.

25. As a citizen of the United States of America, he was proud of his country's strong role in advocating an end to apartheid in South Africa. The United States had expressed its outrage at the continuing lack of democracy in South Africa and had articulated concrete preconditions to its lifting of economic sanctions against South Africa. Those conditions included the release of all political prisoners; the repeal of the state of emergency; the unbanning of political organizations and the guarantee that all South Africans could freely participate in the political process; the repeal of discriminatory legislation; and the commencement of good faith negotiations with truly representative members of the black majority. The Government of South Africa had satisfied some of those conditions but had not yet completed the changes that would justify the lifting of sanctions.

26. The countries of the world looked forward to the day when all sanctions were lifted and South Africa once again joined the community of nations. It was essential to work toward establishing normal economic and cultural ties with the people of South Africa. The Sub-Commission should urge the Government of South Africa to take all steps necessary to make possible the re-establishment of such ties.

27. A survey of recent legislation in South Africa illustrated both the progress achieved and the remaining obstacles to the creation of a non-racial democracy. In June 1991, the international community had welcomed the repeal of the Land Acts, the Group Areas Act and the Population Registration Act, which together comprised the legal cornerstone of apartheid. For decades, those laws had dictated the employment, housing and educational opportunities of black South Africans and had condemned most of them to a life of deprivation and despair. For example, the Land Acts had set aside a mere 13 per cent of the land for black South Africans who comprised 85 per cent of the population. Those laws prevented blacks from buying or renting land outside certain designated areas. Black farmers outside of those areas were evicted or relegated to labour tenant status on white-owned farms. Many black communities had been forced off the land that they owned.

28. The Group Areas Act had designated certain zones in which only members of a particular racial group could live or own property. The South African Government had now repealed those laws and established a commission to study the allocation of land to blacks who had been forcibly removed from their property.

29. The Sub-Commission should urge the South African Government to build upon those legislative changes to relieve the plight of the black majority. The repealed laws had long impoverished most black South Africans so that it had been nearly impossible for them to purchase any land that might become available. In addition, the new legislation did not provide for restitution to persons who had been forcibly removed from their property. Similarly, the repeal of the Population Registration Act, which racially classified every person at birth, would only end the racial registration of the newborn and newcomers. The existing population register would apparently remain in place until a new constitution was adopted.

30. The world community hoped that the recent legislative changes would lead to the total elimination of apartheid and would not merely transfer the policies of apartheid to the local level. For example, one provision of the recent legislation allowed present white owners to set so-called "norms and standards" for their neighbourhoods. The result could be to keep non-whites out of those residential neighbourhoods and thus preserve the status quo under apartheid. Such an outcome was unacceptable. It would betray the hopes and promises of all parties who had declared themselves committed to ending the apartheid system.

31. All foes of apartheid welcomed South Africa's lifting of its state of emergency last year. Unfortunately, that action had not eliminated the practices that prevented the majority population from participating fully in the political process. The Government retained the right to declare "unrest areas" and thereby exercise the same broad powers to arrest, detain, and use deadly force as had been permitted under the state of emergency. Existing law permitted incommunicado detention for indefinite periods and also allowed a police officer to detain anyone merely on suspicion that the person might disrupt civil peace. Government regulations also permitted the police and other officials to impose curfews and prohibit public gatherings. Such repressive legislation was a heavy burden on blacks who were denied the right to vote and therefore depended on peaceful demonstrations to express their political views. Clearly, the devastating legacy of apartheid would not easily be erased. A key element in removing that legacy and achieving full political participation in South Africa was the release of political prisoners and the return and indemnification of persons exiled for political offences. One year earlier, the negotiating parties had issued a joint statement known as the "Pretoria Minute". That agreement had contained a timetable for granting immunity for political offences to persons inside and outside South Africa. The deadline had passed; yet it appeared that hundreds of political prisoners remained incarcerated and only a fraction of the tens of thousands of eligible political exiles had felt safe enough to return to South Africa. Their fear and scepticism appeared justified. Reports indicated that dozens of returning exiles had been detained for interrogation. In addition, the Government had denied many jailed opponents of apartheid the status of political prisoners, thus making them ineligible

for release under the "Pretoria Minute". The Government of South Africa must honour the commitments it had made in the Pretoria Minute. It must eliminate all obstacles that impeded the process of release and indemnification and thereby delayed the transition to a non-racial democracy.

32. The most serious and tragic obstacle to fruitful negotiations was the unrelenting brutal violence that continued to plague black South Africans. A government had no greater role than to protect the persons who lived within its borders. The Government of South Africa must act forcefully to defuse the tensions that existed and to guarantee the safety of all South Africans. The people must have confidence that the Government was making every effort to end the violence that continued to ravage large segments of South African society. The people must also be assured that not only the Government but also the courts and the police were acting in an impartial manner when they carried out their duties to maintain civil peace.

33. The Sub-Commission should insist that the South African Government thoroughly investigate all claims that security forces or other State organs were fostering and committing acts of violence. One government official had admitted that, during 1990, security forces had killed approximately 200 people and wounded more than 4,000. A reliable non-governmental organization had stated that the number of victims was even higher. Equally disturbing were the documented instances in which police or security forces had joined one side in attacking a rival group, or had failed to intervene when an attack was in progress. For example, various reliable sources had reported seeing the police join Inkatha members in attacking supporters of the African National Congress; had failed to respond to ANC calls for help; had disarmed ANC members but not Inkatha; and had provided transportation for Inkatha members to the scene of a conflict.

34. The Government should continue to investigate the strong evidence that State-sponsored death squads operated both inside and outside South Africa. Although one Government commission had found insufficient evidence of police-run death squads, a subsequent court decision had called into question that conclusion. That court had found that a police officer had deliberately misled the court and the Government commission about the existence of death squads. Yet despite the strong evidence, there had been relatively few prosecutions and the bloodshed continued unabated.

35. It must be understood that the violence was not purely a dispute between rival factions. It was not the victims of apartheid who were to blame for their plight. Rather, it was the responsibility of the architects of apartheid - the South African Government - to ensure the peaceful climate necessary to dismantle the system they had created and to end the terror that had kept it in place.

36. There could be no lasting peace without respect for the rule of law. The Government of South Africa must demonstrate its commitment to that basic principle by thoroughly investigating all allegations of abuses and violations of the law and by prosecuting whenever the evidence indicated that violations had occurred. It was essential that the Government should promote respect for the law by aggressively investigating even the most sensitive allegations that

implicated organs of the State itself. Such an examination would be a test of the Government's leadership and its skill and resolve to end apartheid.

37. The international community continued to condemn apartheid as a gross violation of human rights and a crime against humanity. The Sub-Commission should praise South Africa's significant steps in the right direction. At the same time, the Sub-Commission should indicate that it was disturbed by the continuing violence and lack of progress in fully implementing measures to end apartheid. It should call upon the Government of South Africa to ensure an atmosphere free of violence and conducive to negotiations for the total eradication of apartheid and the beginning of the promised new era in South Africa.

38. Mr. Khalifa, the Special Rapporteur, had rightly pointed to the major changes which had taken place during the past 12 months not only in South Africa but also in Eastern Europe. The Special Rapporteur's conclusions, however, were more pessimistic than his own. There were some parallels between East Europe and South Africa in that a transition had begun in both; two steps forward had, however, been followed by one step back. That however was part of the essential process of major societal change. In the relationship between the United States and the Soviet Union, President Bush had taken the position that President Gorbachev had made important reforms and had applauded such actions. Equally, President De Klerk had taken some important steps in South Africa but the ultimate goal had not yet been reached. Expectations should not be set too high. A country previously lacking in democratic usages could not convert to a democracy overnight.

39. Mr. Khalifa had expressed the view that the process in South Africa was reversible. President Bush had used the word "irreversible". He wondered whether Mr. Khalifa had taken account of the world outrage which would follow any reversal in South Africa. He himself could not believe that the process would be reversed.

40. It had to be recognized that both President Gorbachev and President De Klerk faced internal political problems in accomplishing the progress which they wished to achieve and must take into account the consequences of the internal political opposition.

41. He had been startled and somewhat chagrined that Mr. Khalifa had singled out the United States in his comments on sanctions. Mr. Khalifa's emphasis on the United States of America was one-sided and contrary to his own report (E/CN.4/Sub.2/1991/13) which had demonstrated that the United States was a leader in disinvestment with a disinvestment rate of 62 per cent, a figure which was in excess of most of the major industrial countries. It was true that, according to paragraph 61 of the report, there had been a marked increase in exports to South Africa, but the paragraph had noted that the increase for the United States had been 41 per cent as against 72 per cent from Germany. He therefore wondered why the United States had been referred to specifically for its role in sanctions. His country had been the first to impose sanctions. Congress had passed a law setting five conditions for the lifting of sanctions and the President had complied with that legislation.

42. References to a "sting" operation, and to "plastic surgery" reflected a very pessimistic view of the situation and gave little credence to the integrity of the people implementing reforms. He himself had seen that considerable progress had already been made. It was not good tactics for the Sub-Commission constantly to condemn people who were making improvements because the improvements were not being effected fast enough.

43. Mr. Khalifa had drawn a useful distinction between de facto and de jure apartheid. The abolition of de jure apartheid had not yet been finalized, nor certainly, had de facto apartheid. Complete de facto equality was extremely difficult to achieve and indeed perhaps never would be. The international community would want to find a complete people in South Africa once apartheid had been abolished. It would be important to retain what was good as encouragement to greater progress in the future. One day South Africa would come to the United States and other countries asking for help in trade so that it could assist the whole of its people. Economic sanctions must not be overdone.

44. He fully subscribed to the condemnation of apartheid and urged that all appropriate measures should be taken. The pressure must be kept up but he would urge that it should not be so great as to bring about economic devastation. The goal should be the establishment of a truly pluralist multiracial society in South Africa. It was wrong to be over-pessimistic. Democracy would not be achieved overnight.

45. Mr. GUISSE congratulated Mr. Khalifa on his outstanding work of information and analysis of the problem of apartheid, an issue unique in history. He thanked all who had requested that the issue should be studied as an isolated phenomenon in order to highlight it even further. Apartheid was not merely a system of discriminatory practices; it remained a system of government based on racial discrimination. It had been built up over 50 years, and had not been abolished just because some of its rules had been abandoned. The memory of apartheid remained, and educational or other compulsory measures were needed to root it out from the mind of every South African whether proponent or victim of apartheid.

46. The international community should therefore make haste slowly. The raising of sanctions by certain economic Powers was premature. Apartheid was like a furious, wounded beast, more ferocious than ever before. It was scandalous that the Government of South Africa should consider it acceptable that public money should be given to certain groups using violence to eliminate others.

47. The international community was not being asked to infringe the principle of non-interference in internal affairs in the case of South Africa. It was merely being asked to recognize that apartheid still continued and that it must be combated by peaceful economic means. Neither the people of South Africa, Mr. Nelson Mandela nor the OAU had asked for sanctions to be lifted, since the reasons for their imposition still remained. He therefore agreed with Mr. Khalifa that as long as political, military and economic power was in the sole hands of the whites, the dismantling of apartheid could still be reversed.

48. Mr. EIDE congratulated Mr. Khalifa on his very useful introduction and analysis of recent political developments. He had also appreciated the statement by Mr. Treat.

49. Current developments in South Africa were at one and the same time encouraging and ominous. Within the South African power structure there were elements still relentlessly pursuing violence and destruction. However, he did believe that President De Klerk was trying to transform South Africa and that he had the support of the white community. It was not yet clear whether that support was sufficient.

50. It was gratifying that many of the blatant apartheid laws had been scrapped, but it was also true, as Mr. Treat had pointed out, that new laws still tended to protect privileged groups.

51. It was hard to judge how to encourage positive forces while discouraging negative ones. In his own country it had been decided that sanctions could be eliminated only when the political prisoners were released and encouragement to violence had ended. However, at a meeting of Foreign Ministers of the Nordic countries, it had been stated that in the light of recent developments the time was approaching for a re-examination of economic sanctions.

52. He suggested that the Sub-Commission should try to analyse ways of encouraging the positive forces at work in South Africa.

53. On the question of discrimination in general, the problem of racial and ethnic discrimination was becoming increasingly severe in regions of the world outside South Africa. Violence was being practised against foreigners and migrant workers in the West, and in Central and Eastern Europe there had been a resurgence, albeit limited, of anti-Semitism and fascism, and an upsurge of nationalism and xenophobia directed against groups that had been living together for decades.

54. He drew attention to his study on the achievements made and obstacles encountered during the Decades to Combat Racism and Racial Discrimination (E/CN.4/Sub.2/1989/8 and Add.1). The proposals for changes made by members of the Sub-Commission would be incorporated in the final version, and he was open to further suggestions to improve the text.

55. Turning to the recommendations put forward in the note by the Secretary-General (E/CN.4/Sub.2/1991/11), he approved the proposal in paragraph 11 concerning the monitoring of apartheid in transition. Despite the removal of certain blatantly discriminatory laws, it was clear that legislation to restore equality would not be adopted until the legislature itself was democratically elected.

56. The problem of restoring equality in the economic field remained. Tremendous economic and social injustices subsisted in South Africa, which would be hard to eliminate. He agreed with Mr. Treat that there was no point in destroying the South African economy, for that would have adverse effects on the whole population; on the other hand, economic privileges must not remain in the hands of a few.

57. The problem of affirmative measures would therefore become extremely important. In that connection he congratulated the Centre for Human Rights on convening, in June 1991, a seminar on constitutional processes in South Africa in conjunction with the World Council of Churches, at which he had been invited to lecture, and at which an interesting debate had been held between representatives from the ANC and other liberation movements as well as the Government. A follow-up meeting was to be held in South Africa in October 1991. One of the measures discussed at that seminar was the problem of affirmative action to restore equality in fact and in law.

58. He could accept most of the recommendations in the note by the Secretary-General (E/CN.4/Sub.2/1991/11) in connection with the proposed updating of the special study of racial discrimination in the political, economic, social and cultural spheres prepared by the Special Rapporteur, Mr. Hernán Santa Cruz (E/CN.4/Sub.2/370 and Add.1-6 and Add.6/Corr.1), and wished to suggest that cases of discrimination which had originated in slavery should be addressed. He agreed with the proposals in that note for strengthening coordination within the United Nations system and in particular the possibility of preparing in collaboration with UNESCO, a programme of activities to be undertaken in the field of education and mass media to foster attitudes of equality and non-discrimination in States Members of the United Nations. The question of promoting international standards was an issue that the Sub-Commission could discuss in its joint meeting with CERD.

59. It was important that the Sub-Commission should make its own contribution to the 1993 World Conference on Human Rights, particularly in the field of prevention of discrimination and protection of minorities.

60. He suggested that the Sub-Commission's forthcoming meeting with CERD should not merely be a formal meeting but should identify issues on which there could be an exchange of views. Suitable subjects for debate were the resurgence of racism, affirmative action and special measures in relation to allegations of reverse discrimination; the interrelationship between freedom of expression and association and measures to be taken against the language of hatred and discrimination. Lastly, the question of education was of great interest to both bodies.

61. As far as the Sub-Commission's own work was concerned, he suggested that a more thematic attitude towards issues should be adopted. With regard to South Africa, on which Mr. Khalifa should be encouraged to continue his work, the main theme should be monitoring apartheid in transition, including the monitoring of constitutional measures towards full political participation, the development of measures to provide equality in fact and not merely in law, control over and composition of the army, security and intelligence services.

62. As far as discrimination in general was concerned he suggested that the Sub-Commission should reiterate its previous request for an overview of current trends of racism, discrimination, intolerance and xenophobia to be prepared by the Secretary-General. Governments, non-governmental organizations and specialized agencies should therefore be requested to provide the Sub-Commission with more information.

63. The Sub-Commission should pursue its study of affirmative action and special measures in regard to allegations of reverse discrimination, and should also focus on measures to replace the culture of hatred, violence, xenophobia and discrimination by cultures which promoted harmonious coexistence and equality.

64. Mr. YIMER, speaking on agenda items 5 (a) and (b), said that the fact that agenda item 5 (a) had been on the Sub-Commission's agenda since 1978, and had been included in its primary terms of reference, indicated the importance of the subject. The Sub-Commission had made a significant contribution to combating racism and racial discrimination, but despite all the instruments adopted, events organized and bodies established, those phenomena continued and were in fact spreading. The fact that apartheid was no longer institutionalized was irrelevant: the struggle against racism must continue.

65. The note by the Secretary-General entitled Outline of ways and means necessary to increase the effectiveness of United Nations actions to combat racism and racial discrimination (E/CN.4/Sub.2/1991/11), contained important information and recommendations. Paragraphs 7 and 8 contained interesting observations, and the new conflicts mentioned in paragraph 8 (a) to (f) should serve as a guide to the Sub-Commission in its future work.

66. In connection with improving international action, he endorsed the suggestion to update the study by Mr. Hernán Santa Cruz and to divide the assessment according to the main contexts in which discrimination was likely to occur.

67. He also endorsed the suggestions made on monitoring apartheid in transition and strengthening coordination within the United Nations system, including the regular convening of a joint meeting of the Sub-Commission and CERD and the International Day for the Elimination of Racial Discrimination. The possibility of convening a global consultation of experts in 1992 was worth considering.

68. Important suggestions on improving education for non-discrimination were made in paragraph 32 of the note.

69. With regard to the Sub-Commission's request in resolution 90/2 that the Secretary-General should prepare an overview of current trends of racism, discrimination, intolerance and xenophobia against vulnerable groups in the world, he noted that insufficient information had been received for such an overview to be submitted to the current session and hoped that further replies would be received to enable it to be submitted the following year.

70. Mr. Khalifa's reports constituted an important element in the chain of sanctions against the Government in Pretoria. Amidst the general euphoria generated by the changes which had undoubtedly taken place in South Africa in recent years, one essential point tended to be overlooked. The Population Regulation Act had been repealed and beaches and public parks were no longer segregated, but apartheid still existed in so far as the black majority still did not have the vote and the white minority still ruled the country. The ultimate aim was majority rule, which it could take years to bring about. The international campaign against apartheid should therefore continue, and in

that campaign sanctions played an important role. As chapter III of Mr. Khalifa's latest report showed, the South African Government was taking steps to circumvent them. That proved that they were having an effect. Publicity, including the annual reports submitted to the Sub-Commission, was one kind of sanction. Further improvements in South Africa would be welcome, but as long as the black majority did not have the vote and apartheid continued to exist, every effort must be made to bring about its de jure and de facto elimination.

71. Mrs. WARZAZI noted that, despite the two Decades to combat racism, the progress made had been so unsatisfactory that it had been considered necessary to declare a third Decade. A large number of international standards and instruments had been adopted, and the conscientious follow-up given to them by the Committee on the Elimination of Racial Discrimination and the Human Rights Committee could have been expected to lead to a clear improvement in the situation. The end of the cold war could also have been expected to have had a beneficial effect on the populations of conflict-ridden areas. Unfortunately, that had not been the case. On the contrary, the world seemed to be doomed to a state of perpetual agitation in which the international community ran around from one place to another trying to eliminate scourges with the inadequate means at its disposal.

72. The painful events which had taken place in Liberia and Sri Lanka were indicative of behaviour incompatible with the minimum respect for the human rights of ethnic groups. Ethnic passions were now ravaging Europe, where the influence of the extreme right was increasing spectacularly as a result of its campaign against immigrant workers. Not a day went by without murders, armed attacks, or punitive incursions against areas inhabited by immigrants, without arbitrary arrests and suspect deaths in police stations. Admittedly, some Governments were aware of the situation and were conducting investigations, but it could only be concluded that racism was on the increase and that something had gone wrong with the democratic mechanisms of the countries concerned. An analysis of the political situation in those countries indicated that a multi-party system could, in certain cases, be conducive to an upsurge in racism, since the legally recognized right-wing parties, in order to score political points, embarked on campaigns contrary to democratic principles based on respect for the human person.

73. It was particularly disturbing to learn that the latest opinion polls showed, for example, that Mr. le Pen's National Front might obtain 14.5 per cent of the votes as a result of its aggressive attitude to immigrants. What, then, should one expect of a Government which also wanted to mobilize the full support of its electors? What should it reply to senators who considered that immigration and insecurity went hand in hand? What measures could be taken against racist mayors? Easy ways-out had apparently been found, such as mass deportations and the signature, by several countries, of an agreement to close the frontiers of Europe to aliens, notwithstanding the principle of freedom of movement. Nevertheless, some French specialists had recently found that between now and the year 2000 Europe would need approximately 150,000 more workers a year. In February 1991, ILO had published a report on the increase in immigration in the world and had asked what steps could be taken to avoid the worst and to make the best of such movements of labour.

74. In his opening statement, the Under-Secretary-General for Human Rights had suggested a number of topics that might be considered at the Sub-Commission's joint meeting with CERD. She agreed with most of them, but she found one disturbing. That was the question of potential conflicts between the right to protection against racial discrimination and certain other fundamental rights and freedoms. In fact, the question did not even arise, since, in the campaign against racism, the right to discriminate, whether by word or by deed, was always to be condemned.

75. It was clear that no new measure could be confidently recommended if a government lacked political will or was merely passive. If an end was really to be put to racism, the State had to prevent any incitement to racial hatred. Freedom of expression could not be allowed to become an instrument for the destruction of vital human rights such as respect for human dignity, security and equality. The countries from which migrant workers came had no means of bringing pressure to bear on the States in which they were employed. Fortunately, national non-governmental organizations were demanding energetic intervention by their governments to protect migrant workers. In that connection, it would be interesting to know how many international NGOs were actively concerned with the problem.

76. Document E/CN.4/Sub.2/1991/11 was extremely interesting, but what she found most attractive was the proposed study on new problems and trends leading to the recrudescence of racism and xenophobia. The peoples of the whole world were going to have to live together. The example of the United States of America, where statistics pointed to a complete social upheaval at the ethnic level, was there to remind the world that every effort must be made to achieve consensus and ethnic coexistence if peace, stability and prosperity were to prevail.

77. Mrs. PALLEY said that all the issues involved had been brillantly outlined by Mr. Khalifa, Mr. Treat and other speakers. However, although she agreed very strongly with Mr. Khalifa that it was far too soon to lift the economic sanctions against South Africa and that the machinery for them must remain in place in case it was needed again, she strongly disagreed with his analysis of the trends in that country. Without using the word "conspiracy", he had, in fact, taken a straightforward "conspiratorial" view. That was quite understandable in view of South Africa's history, but it concentrated on only certain aspects of what was happening in a very complicated system, stressing all the continuing evils and ignoring the complexities. Real change had taken place and a real transition was under way, although there were important sections of the white establishment, especially the police and sectors of the army and some members of the Cabinet, who had been sabotaging the efforts to put an end to apartheid. Mr. De Klerk was not in control of all on his side. In world history there had been very few instances of overnight peaceful change, and it had been necessary for Mr. De Klerk to bring his side into line. That he had been doing, but not quickly enough.

78. At the same time there was also a need for ANC, PAC and other political groupings, particularly Inkatha, to get their acts together. They should not attempt to exclude different groups within their own side. Until both sides, black and white, had got their acts together, there would be no agreement to move forward quickly. It was disastrous that internal feuding on the black

side had been exploited by the white Government. However, the feuding had not been created by the Government, since anyone who knew Africa well was aware of its tribal divisions and of the strife to which they had led. They simply could not be ignored, and until violence by whites against blacks and by blacks against blacks had ceased, the two sides would not come together. She fully agreed with Mr. Treat regarding the need to investigate and end the violence, but even more effective would be an invitation to black leaders to serve in a joint interim Government, to be followed by the elaboration of a new constitution. Sanctions could then be suspended and economic growth, so essential for economic equality in the future, could be resumed. The South African economy was the only one in Africa which was partly a first world economy, and it would be tragic to destroy it.

79. She did not agree with Mr. Khalifa that the changes were reversible, although there could be ups and downs and some white groups would try to resist change. The irreversibility of the process had already been seen in the case of Zimbabwe. However, everyone needed to learn the lesson that moral distaste and indignation were luxuries that people in the real world could not afford. She had learnt that lesson when she had been involved in the negotiations for the independence of Zimbabwe and had found it necessary to shake hands with two men involved in the murder of a close friend of hers. Her personal distaste and horror could not be allowed to disrupt the negotiations.

80. A particular feature of the problems caused by intensified migration from the third world, flows of refugees due to ethnic conflicts and increased racial discrimination in Western countries was the question of immigration, the treatment of immigrants, asylum, and deportation, which needed to be thoroughly studied by the Sub-Commission, since some Western Governments tended to be hypocritical in the matter, adopting neutral wording in immigration regulations but applying discriminatory operating criteria. She believed that the Sub-Commission needed to take the whole question of immigration into its jurisdiction.

The meeting rose at 1 p.m.